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## CORRESPONDENCE.

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**When Is an Action Begun So as to Stop the Running of the Statute of Limitations.**

Editor, Virginia Law Register:

I read with interest an article in the January number (12 V. L. R. 675) on the question of when an action should be considered commenced so as to stop the running of the statute of limitations. Having had the same matter under consideration some years ago, I then came to the conclusion that the teste of the process—the date it bears, was decisive, unless it was shown that the clerk was in error as to his dating. The very recent case of *Davis v. Roller* (Va.) 55 S. E. Rep. 4, seems to so decide, and should doubtless silence further discussion. I nevertheless, take the liberty of citing below from two very respectable sources, since the writer of said article asserts that the case was decided upon the “bare parenthetical statement” of 4th. Minor (2d Ed.) p. 799. I shall not go outside of Virginia, for the authorities which can be quoted from elsewhere are in hopeless conflict.

In a work entitled “Essay on Limitations,” by the late Judge Wm. T. Joynes, one of the ablest judges that ever sat upon our Supreme Court of Appeals, at page 189, he states: “The suing out of the writ is the commencement of an action at law, and this is ascertained *prima facie* by the teste, but the real time of issuing may be shown in opposition to the teste.” Judge Joynes’ statement in this work should be as persuasive as any made in his many luminous opinions from the bench, since it was prepared by him with the greatest care, and no view was advanced therein until after he had given the matter mature consideration.

In 6 V. L. Reg., p. 700, the editor (Prof. W. M. Lile) states that he had had occasion to examine the question recently before writing, and “Our impression is that the view generally prevailing in Virginia is that the writ is issued as soon as it is completed by the clerk, provided it is intended, in good faith, for immediate service.” I take it that had this learned editor come to a conclusion, after his investigation, at variance with “the view generally prevailing in Virginia,” he would have told us so. I believe that Professor Lile’s opinion upon any legal matter, made after investigation by him, is, and should be, highly regarded by the profession.

Yours truly,

C. Aylett Ashby.

Newport News, Va.